

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JOSHUA THOMAS EARL WILLIAMS, SR.

PLAINTIFF

V.

CIVIL ACTION NO. 4:09CV69-MPM- JAD

TERRY L. BURNS, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On September 17, 2009, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court via video conference for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

The plaintiff alleges that Terry Burns slammed his hand in a food tray causing an injury which required stitches and has left him with residual nerve damage. He also alleges that he was given two RVRs for the incident to cover up what really happened. He has also named the Mississippi Department of Corrections as a defendant. In §1983 actions there can be no vicarious liability for employers or supervisors for the actions of prison employees under a theory of respondeat superior liability. *Monell v. Department of Social Services*, 436, U.S. 658, 98 S. Ct. 2018, 56 l. Ed. 611(1978). Williams has made no allegations against the Mississippi Department of Corrections with regard to their policies or procedures or otherwise stated a claim against MDOC.

The undersigned recommends that the Mississippi Department of Corrections be dismissed with prejudice from this action for the failure to state a claim against it.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and

recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 17th day of September, 2009.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE